DKT NO: X06-UWY-CV186046436-S	**: COMPLEX LITIGATION DKT**
ERICA LAFFERTY	**: JUDICIAL DISTRICT WATERBURY**
v.	**: AT WATERBURY, CONNECTICUT**
ALEX EMRIC JONES	**: NOVEMBER 16, 2022**

DKT NO: X06-UWY-CV186046437-S

WILLIAM SHERLACH

v.

ALEX EMRIC JONES

DKT NO: X06-UWY-CV186046438-S

WILLIAM SHERLACH

v.

ALEX EMRIC JONES

SHOW CAUSE HEARING AS TO ANDINO REYNAL

DISCIPLINARY COUNSEL'S POST TRIAL MEMORANDUM OF LAW

Disciplinary counsel submits this Post Hearing Memorandum of Law following presentation of this matter to the court, Bellis, J.

Proposed Factual Findings.

Testimony of Attorney Christopher Mattie.

Attorney Norman Pattis (hereinafter "Pattis") represents defendants Alex Emric Jones and Free Speech Systems, LLC in the underlying civil litigation. The civil action for damages arises out of the mass shooting that happened at Sandy

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Hook Elementary School on December 14, 2012. The complaint alleges that despite the overwhelming evidence as to what happened that day "certain individuals have persistently perpetuated a monstrous, unspeakable lie: that the Sandy Hook shooting was staged, and the families who lost loved ones that day are actors who faked their relatives' deaths." Plaintiffs further allege that defendant Alex Jones is a conspiracy-theorist radio and Internet personality who holds himself out as a journalist. He is the most prolific among those fabricators and promoted the harassment and abuse of the surviving families among his audience of millions. Plaintiffs bring this multi-count complaint sounding in Invasion of Privacy by False Light; Civil Conspiracy, Defamation and Defamation Per Se; Civil Conspiracy, Intentional Infliction of Emotional Distress; Civil Conspiracy, Negligent Infliction of Emotional Distress; Civil Conspiracy, and Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110a, et seq.

Litigation of this matter has been highly contentious and has acquired national interest. Discovery among the parties has been extensive. The plaintiffs anticipated that the Jones defendants would seek many categories of highly personal information, including the plaintiff's medical histories, psychiatric records, and information concerning the plaintiff's private social media accounts. Plaintiffs' operative complaint documents defendant Alex Jones' propensity to make the plaintiffs' personal information the subject of his show and that these defendants have a history of abusive litigation tactics. [T.T. 8/17/2022, Mattei, p.20. l. 21-26].

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"The Jones defendants' request of our clients, among other things, medical records, employment records, financial records. Communications that included personal identifying information, like social security numbers, email addresses, etcetera. And so it was very, very important to our client's that those materials be treated in a confidential and protected way, so that they weren't disseminated, either publicly, or in certain cases, to individuals associated with Mr. Jones and others, who our clients had reason to fear would not treat those records in a proper way." [T.T. 8/17/2022, Mattei, p.20. l. 9-18]. The discovery responses were provided to the Jones defendants by way of electronic data. [T.T. 8/17/2022, Mattei, p.23. l. 22-25]. This allowed the attorneys for the Jones defendants to access, by a computer link over the Internet, to view and download the discovery documents to their own server. [T.T. 8/17/2022, Mattei, p.24. l. 7-10].

Pattis was subject to the protective order. [T.T. 8/17/2022, Mattei, p.24-5. l. 27-2]. "In terms of our clients' production to the Jones defendants, I believe that we have produced 390,000 plus pages of materials. I believe that somewhere just shy of 4,000 of those pages are medical records of our clients. …All medical records were designated as highly confidential attorneys' eyes only." [T.T. 8/17/2022, Mattei, p.48. l. 16-22].

Attorney Mattei became aware on July 24, 2022, of a concern that there may have been the unauthorized disclosure of the Connecticut plaintiffs' discovery to Attorney Bankston, attorney for the Texas plaintiffs. [T.T. 8/17/2022, Mattei, p.60. l. 11-13]. Mattei immediately satisfied himself that Bankston was

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Juris no. 422382

appropriately safeguarding and sequestering the documents. [T.T. 8/17/2022, Mattei, p.60. l. 20-22].

"It wasn't until I think August 3rd, whenever it was, where this – where it appeared that not only had Attorney Reynal obtained protected materials without authorization, but that a third attorney, Attorney Lee may have as well. [T.T. 8/17/2022, Mattei, p.60-1. l. 24-1]. Pattis forwarded to Mattei, an email Pattis received from Reynal confirming the unauthorized disclosure included the Connecticut plaintiffs' "attorney eyes only" medical records and depositions. "Bankston has already represented to the court that he has destroyed the medical records and depositions. I've copied my team on this email as well to coordinate our efforts. I am profoundly embarrassed by our oversight. Literally no words." Plaintiff's Exhibit 1, p.5; [T.T. 8/17/2022, Mattei, p.46-7. l. 27-2].

Pattis' email to Mattie on August 4, 2022, admits that Reynal is not counsel of record in the Connecticut case. Pattis further explained that "in any case, we passed along a copy of our file to [Reynal] and to a bankruptcy attorney named Kyung Lee who is working on behalf of FSS. [Lee] no longer has a copy; he turned his over to [Reynal] I have asked [Reynal] to return the file to us. … I directed an associate to send our files to the two attorneys who requested them to defend Alex. I did not direct the associate to withhold the plaintiff's information. If that is an error, responsibility for it falls on my shoulders." [Plaintiff's Exhibit 1 p.2]. The transfer was done by mailing to Lee a white external hard drive containing all of the Connecticut plaintiff's discovery. [T.T. 8/17/2022, Mattei, p.50 l. 27-2; T.T. 8/17/2022, Lee, p.129 l. 20-27].

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Testimony of attorney Norman Pattis.

Pattis was called to the stand to testify and his response to each relevant question regarding his receipt, storage, and transfer of the Connecticut plaintiffs' highly confidential-attorney eyes only medical records and depositions is not applicable to Reynal.

Testimony of Attorney Kyung Lee.

Attorney Kyung Lee is a Texas admitted attorney since 1984 and practices corporate bankruptcy and reorganization law. [T.T. 8/17/2022, Lee, p.119 l. 11-19]. He represented three "Info W" debtors in a chapter 11 bankruptcy filed in Texas on April 18, 2022. [T.T. 8/17/2022, Lee, p.120 l. 1-4]. His role in the bankruptcy was to assist the three debtors in a restructuring of the claims by the Connecticut and Texas plaintiff's. [Id 15-27]. "With respect to the Chapter 11 bankruptcy case, once I file Chapter 11 for the three debtors or a debtor, the prepetition litigation is stayed, pursuant to the automatic stay provision of Bankruptcy Code Section 362." Lee did not undertake representation of the defendants in the pending state court action. "So in most instances, I don't deal with those litigation per se, and the nuances of the state court litigation because they are stayed and in most instances, the litigation becomes a claim in the bankruptcy case. [T.T. 8/17/2022, Lee, p.121 l. 14-21].

Three Motions to Dismiss were filed shortly after the three debtors filed the Chapter 11 bankruptcy. One was filed on behalf of the Connecticut plaintiffs, one was filed on behalf of the Texas plaintiffs, and the third was filed by the United States Trustee. [T.T. 8/17/2022, Lee, p.122 l. 11-14]. The motions to dismiss

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were never resolved as the Texas and Connecticut plaintiffs indicated they would dismiss the three bankruptcy debtors from the lawsuits. [T.T. 8/17/2022, Lee, p.123 l. 7-14]. Lee sent an email to the Connecticut defendants' former attorney, Jay Wolman, and Texas defendants' attorney Andino Reynal requesting the defendants' discovery so that he would be in a position to determine what type of information had been produced by the debtors or the defendants associated with the financial condition of the three companies that were in the Chapter 11. [T.T. 8/17/2022, Lee, p.126 l. 3-9]. Wolman instructed Lee to obtain the Connecticut defendant's information from their current attorney, the Pattis law firm. [Plaintiff's Exhibit 4]. The request by Lee began an email chain that included Norman Pattis and Cameron Atkinson of the Pattis law firm. [Id.].

Wolman responded on May 2, 2022, that he had just provided the Pattis law firm with a brand-new SSD drive with several hundred gigabytes of data. Atkinson, of the Pattis law firm, confirmed that the drive worked, and Wolman suggested that Lee get the production from Pattis. It is during this email chain that on May 2, 2022 Wollman also provided an email to Lee, Pattis, Atkinson and others with the following caution: "I should also add a caveat (and a word of precaution to Norm) before the drive of the files are sent to you. Under the confidentiality order in the Connecticut case, I'm not confident you're eligible to receive documents marked by the plaintiff as confidential or AEO. As I am not counsel of record, I don't feel comfortable making any decisions that would implicate the order and potentially expose the clients to pay any liability. Sincerely, Jay Wolman." [Exhibit 4]. Shortly after the emails of May 2, 2022,

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Juris no. 422382

Pattis instructed Atkinson to send the white external hard drive to Lee which Lee received in a bubble wrap envelope with cover letter. [Plaintiff's Exhibit 2 page 2; Second Stipulation of Facts; T.T. 8/17/2022, Lee, p.129 l. 20-27]. No one from the Pattis law firm ever elaborated on the protective order that was in place with regard to the information that was ultimately provided to Lee although the Pattis law firm was included on the email chain. [Plaintiff's Exhibit 4]. "Q. Would it be accurate to say that you had no need whatsoever for any medical records to do your job. A. That is accurate. I did not – I was not looking for and – any medical reports for purposes of the bankruptcy litigation that was I undertaking." [T.T. 8/17/2022, Lee, p.127 l. 9-13].

During this time, the issues regarding the motions to dismiss were resolved and Lee never had a chance to examine the contents of the disk drive and had no need to focus on either the confidentiality or the contents of the desk because his focus changed to getting the claims dismissed from the bankruptcy cases. [T.T. 8/17/2022, Lee, p.126 l. 17-25]. Lee was in possession of the external hard drive from shortly after May 2, 2022, when he received it from Atkinson through June 15, 2022, when he handed it over to Reynal. [T.T. 8/17/2022, Lee, p.134 l. 4-13].

When Lee handed the external hard drive to Reynal he did not advise Reynal that the information may be subject to a protective order. [T.T. 8/17/2022, Lee, p.136 l. 5-11]. The external hard drive had no writing or markings to alert that it contained highly confidential-attorney eyes only documents. [T.T. 8/17/2022, Lee, p.144 l. 1-5]. Lee received a request from someone from the

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Juris no. 422382

Reynal law firm to turn over the external hard drive to them. On June 15, 2022, Atkinson asked Lee to turn over the external hard drive to Reynal and Lee responded that he had already done so. [T.T. 8/17/2022, Lee, p.137 l. 12-17]. The external hard drive data was not changed in any way when it was in Lee's possession. [T.T. 8/17/2022, Lee, p.144 l. 20-23].

Testimony of Attorney Andino Reynal

Attorney Andino Reynal represents certain Alex Jones defendants in civil litigation pending in Texas. [T.T. 8/25/2022, Reynal, p.23 l. 18-21]. Reynal became attorney of record in the Texas litigation in March 2022. [T.T. 8/25/2022, Reynal, p.30, l. 4-6]. Reynal had made previous requests of Pattis for the defendants' depositions and discovery compliance and was provided that material. [T.T. 8/25/2022, Reynal, p. 37, l. 18-27]. Reynal never asked for, and did not need, the Connecticut plaintiffs' medical records and depositions. [T.T. 8/25/2022, Reynal, p.37, l. 11-14]. When Reynal received the hard drive from Lee, he believed it contained Free Speech Systems and all of Jones production. [T.T. 8/25/2022, Reynal, p.39 l. 9-17]. Attorney Reynal downloaded the data from the white external hard drive onto his internal server. [T.T. 8/25/2022, Reynal, p.43, l. 8-10]. Reynal never reviewed the information once it was placed on the internal server. [T.T. 8/25/2022, Reynal, p.44, l.12-17]. It wasn't until Bankston disclosed his access to the discovery that Reynal first viewed his internal hard drive and viewed the folder structure on August 3rd or 4th, 2022. [T.T. 8/25/2022, Reynal, p.48, l. 8-9].

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Juris no. 422382

An application was filed in the Connecticut litigation on July 1, 2022, to allow Reynal to appear pro hac vice. It was granted by Judge Bellis on July 20, 2022, with the condition that he would file an appearance in the case within 10 days. Reynal testified that by this time he had already received the external hard drive and his receipt of the hard drive had nothing to do with the application to appear in the Connecticut case. [T.T. 8/25/2022, Reynal, p.50, l. 13-22]. Reynal never filed an appearance, and it was determined he would not be pursuing the admission. On July 28, 2022 Mattie emailed Reynal confirming that Attorney Pattis alerted the court that Reynal did not intend upon pursuing the pro hac vice admission and expressed concern that Reynal may have previously had access to Connecticut confidential-designated materials pursuant to the protective order and indicated that he would be bound by the protective order. [Plaintiff's Exhibit 2].

On August 3, 2022, Bankston announced, in open court, that he was given access to computer files that included Mr. Jones's phone but also the Connecticut plaintiffs' medical records. [T.T. 8/25/2022, Reynal, p.62, l. 1-4]. The fact that the white external hard drive data that was transferred from Pattis to Lee and then from Lee to Reynal's internal server contained Connecticut plaintiffs' medical information and depositions that were designated "highly confidential-attorney eyes only" has been irrefutably established.

> "Attorney Reynal confirms that:
> 1. The white external hard drive received by Attorney Reynal from Attorney Lee contained Connecticut plaintiffs' "confidential" and "highly confidential-attorney eyes only" medical reports and discovery that was transferred to Attorney Reynal's internal hard drive system.

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Juris no. 422382

2. Attorney Bankston was provided a link to Attorney Reynal's internal hard drive system that allowed him access to this information."

[Third Stipulation of Fact dated October 13, 2022].

Reynal further explained in his testimony.

> "We had shared a link with Mr. Bankston, I want to say July 22nd. It was a Friday. And it was supposed to be a link to a folder containing text messages that was housed in the same folder as the hard drive. I mean separate folders within the same larger folder. And I identified the folder for my secretary, and I asked her to share it with the other side. Something she's done hundreds of times. She shared the folder."
>
> ****
>
> "I believe she believed she had shared a link to the text messages. Late that night Mr. Bankston sent an email, which I don't know if it's in evidence. But I'll summarize it as saying, I forwarded your link to my paralegal. My paralegal started downloading and then reached out to and said, hey, you know, there's a lot of stuff here. Why don't you come take a look before I download it all? Then he goes on to say words to the effect of, I took a look, and it seems to contain a lot of privileged and/or confidential information."

[T.T. 8/25/2022, Reynal, p.52-3, l. 12-27]

Reynal explains that, despite any security features employed on his network to prevent unauthorized access, the transfer to Bankston occurred due to human error. "Q. But I think the problem that happened here wasn't so much that it wasn't secured from outside viewers, it was put in a place that when you authorized a staff member to transfer documents over to Attorney Bankston, this got included. Correct? A. Yes." [T.T. 8/25/2022, Reynal, p.61, l. 16-21]. And when questioned by the court as to how one would avoid the mistake that was made Reynal answered; "One has to be very careful to select the appropriate folder for sharing." [T.T. 8/25/2022, Reynal, p.63, l. 9-10]. And this issue is further complicated by the fact that Reynal transferred the data from the white external hard drive to his server without ever reviewing the data and understanding what it

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Juris no. 422382

contained.

> Q If you had an opportunity to actually review the hard drive or have someone review it, would you have taken different steps in order to protect it, or catalog it differently?
> A In terms of protecting it, no. I think that the technological facilities that we have at my law firm, I think that they're state of the art. I think that we do a really good job at that. Certainly, we discuss often the importance of protecting people's records. And if I had known there were medical records in there, there probably would have been an additional conversation about, hey, within this file we have, in addition to everything being confidential anyway, we have protected psychiatric records. You got to be really careful.

Attorney Bankston advised Reynal by email on July 23, 2022, at 11:24 PM, that Bankston's paralegal was in the process of "downloading" the data from the link and wanted to make sure that he needed to download all of it. It is clear from the email that information wasn't merely viewed, it was being "downloaded". [Plaintiff's exhibit 7]. Bankston looked through the directories and determined there were depositions and records related to the Connecticut plaintiffs' production it appears to be work product or confidential. Bankston's email did not indicate that he had stopped downloading. The email did not indicate he was taking any action regarding his discovery. Nevertheless, Reynal responded to the situation by disabling the link and indicated to Bankston that he will be sending a new link. [Plaintiff's Exhibit 4]. "THE COURT: So you chose to believe that it would be sufficient to just deactivate the link and not confirm that the materials had not been downloaded. Is that what you're telling me? THE WITNESS: And to ask him to disregard. Yes." [T.T. 8/25/2022, Reynal, p.80, l. 1-5]. "THE COURT: … So what I'm trying to get is, in that ten days' time when you were notified that your office had sent the materials, the confidential materials related

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Tel (860) 706-5055 * Fax (860) 706-5063
Juris no. 422382

to the Connecticut Sandy Hook plaintiff's, you didn't notify anyone else. THE WITNESS: Correct." [T.T. 8/25/2022, Reynal, p.81, l. 11-17].

Although the link to the data was ultimately disabled, Reynal still had the opportunity to examine the link and identify the files that were made available to Bankston on August 3rd or 4th. [T.T. 8/25/2022, Reynal, p.110, l. 1-4]. Under Texas law an attorney has 10 days from the date they are put on notice, to identify any documents that have been inadvertently disclosed to the other party. Reynal filed his motion more than 10 days beyond the date he was initially notified. He attempted to argue that the time did not begin to run until the disclosure in court, but this position was rejected by the court. [T.T. 8/25/2022, Reynal, p.111, l. 6-12].

Testimony of Attorney Mark Bankston

Attorney Mark Bankston represents several plaintiffs in the pending Texas defamation lawsuit against Alex Jones and Free Speech Systems, LLC. Attorney Reynal instructed his administrative assistant to create a computer link to certain computer files on his internal server that would provide Attorney Bankston access to discovery materials. The administrative assistant mistakenly created a link that allowed Attorney Bankston access to additional files on the server including the Connecticut plaintiffs' discovery. Attorney Bankston observed the directory as well as the names of certain folders and confirmed that they contained copies of the Connecticut plaintiffs' depositions and medical/psychiatric reports. [Plaintiff's Exhibit 4].

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Juris no. 422382

Argument

In Connecticut, "[t]he proceeding to disbar ... an attorney is neither a civil action nor a criminal proceeding, but is a proceeding sui generis, the object of which is not the punishment of the offender, but the protection of the court." (Internal quotation marks omitted.) *Burton v. Mottolese*, 267 Conn. 1, 26, (2003), cert. denied, 541 U.S. 1073, 124 S.Ct. 2422, 158 L.Ed.2d 983 (2004). "Because a license to practice law is a vested property interest, an attorney subject to discipline is entitled to due process of law ... In attorney grievance proceedings, due process mandates that [b]efore discipline may be imposed, an attorney is entitled to notice of the charges, a fair hearing and an appeal to court for a determination of whether he or she has been deprived of these rights in some substantial manner." (Citation omitted; internal quotation marks omitted.) *Statewide Grievance Committee v. Egbarin*, 61 Conn.App. 445, 456, cert. denied, 255 Conn. 949, 769 A.2d 64 (2001).

The Rule Violations.

Rule 1.1, Competence, of the Rules of Professional Conduct provides that "[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." The commentary to this rule provides that competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of a problem. It also includes adequate preparation. The required attention and preparation are determined, in part, by

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Juris no. 422382

what is at stake; major litigation and complex transaction ordinarily require more extensive treatment the matters of lesser complexity and consequence.

In the present matter it cannot be disputed that this litigation was one of the most significant litigations pending in Connecticut. Analysis of the attention and preparation determined by what is at stake is easily answered by the jury verdict of almost $1 billion. There is undisputed clear and convincing evidence that Reynal was granted permission for pro hac vice status. This made him subject to the protective order. This was further documented in Mattei's communication to Reynal on July 28, 2022 "that you and any other lawyers in your firm or staff members of your firm who access the plaintiff's confidential and/or attorneys I only confidential materials remain bound by the protective order." There is clear and convincing evidence that it was not competent for Reynal to take possession of several gigabytes of data received by Lee from Pattis without having a complete understanding as to what information he was receiving. Nevertheless, he placed all of this data in a folder in his computer system without making any annotation on the file or segregating the information to prevent unauthorized access or disclosure. This is not simply an inadvertent disclosure by a staff member. Although Reynal employed certain security measures to protect the data from intrusion, no steps were taken to prevent simple human error. This could have included maintaining highly confidential-attorney eyes only documents in a separate protected file, requiring an attorney to review a disclosure by staff member or evening password protecting highly

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Juris no. 422382

confidential information so that it would require an additional step before disclosure.

This misconduct is further compounded by the fact that Reynal failed to take appropriate steps to secure the information once he learned of the disclosure. He testified that he assumed that Bankston would merely erase the information and did not fully investigate the extent of the access and actual download of the information. A very simple reading of Bankston's email to Reynal is clear that Bankston was in the process of downloading the information that was made available.

Rule 3.4, Fairness to Opposing Party and Counsel, of the Rules of Professional Conduct, provides in relevant part a lawyer shall not "(3) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists." Rule 1.0 defines knowingly as "actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances." There is clear and convincing evidence that Reynal knowingly created the situation for unauthorized disclosure by placing the data in a combined defendants file without even identifying what it was. This information should have been placed in a separate secure file until it was identified. Additionally, Reynal knowingly failed to take affirmative steps to address the unauthorized disclosure.

Rule 5.1 (b), Responsibilities of Partners, Managers, and Supervisory Lawyers, of the Rules of Professional Conduct, provide that "[a] lawyer having direct supervisory authority over another lawyer shall make

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Tel (860) 706-5055 * Fax (860) 706-5063
Juris no. 422382

reasonable efforts to ensure that the other lawyer conforms to the rules of professional conduct. With regard to Reynal, no non-attorney assistant contributed to the disclosures that are the subject of this disciplinary proceeding.

Rule 5.3, Responsibilities regarding Non-Lawyer Assistance, of the Rules of Professional Conduct, provides in relevant part that with respect to a nonlawyer employed or retained by or associated with a lawyer, that the firm shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer. Based on this provision as well as the terms of the protective order, Reynal was responsible for his legal assistant's unauthorized disclosure. Again, the precautions that are required to be employed by a lawyer are in direct relation to the type of matter being handled and the potential harm that could occur if the documents are not handled appropriately. This matter required meticulous attention in the handling and dissemination of the documents. It would have been very easy to put measures in place to require a double authentication process before a single staff member improperly disclosed this highly confidential information.

Rule 8.4 (4) provides "it is professional misconduct for a lawyer to:…(4) [e]ngage in conduct that is prejudicial to the administration of justice." "[R]ule 8.4 (4) casts a wide net over an assortment of attorney misconduct. *O'Brien v. Superior Court,* 105 Conn.App. 774, 805, 939 A.2d 1223 (*DiPentima, J.,* concurring in part and dissenting in part), cert. denied, 287 Conn. 901, 947 A.2d 342 (2008). It encompasses behavior that is rude, disruptive or in other ways impedes the proper functioning of the legal system. See, e.g., *In re*

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Juris no. 422382

Fletcher, 424 F.3d 783 (8th Cir.2005), cert. denied sub nom, *Fletcher v. United States District Court,* 547 U.S. 1071, 126 S.Ct. 1827, 164 L.Ed.2d 519 (2006).

Reynal's transfer of Connecticut plaintiffs' highly confidential medical records, as more fully set forth previously, that violated the court ordered protective order is clear and convincing evidence of a violation of rule 8.4 (4).

Rule 1.15 (b) of the Rules of Professional Conduct provides in relevant part that "a lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property.… Other property shall be identified as such and appropriately safeguarded." The commentary to this rule provides that "[a] lawyer should hold property of others with the care required of a professional fiduciary." As outlined above, Reynal failed to properly safeguard the highly confidential-attorney eyes only documents in his possession. In fact, this section requires that "property of others shall be identified as such…" and appropriately protected. Part of the problem is that Reynal accepted a huge amount of documentation from Lee and never identified what the material was. Additionally, he failed to take adequate steps to recover and prohibit further disclosure of the documents.

The protective order entered by the court modified a previous protective order adding the classification of "highly confidential-attorney eyes only". This classification referred to confidential "information that the disclosing party or nonparty reasonably and in good faith believes is so highly sensitive that it's disclosure could result in significant competitive were commercial to the disadvantage or that is so personal and private that the designating party

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Tel (860) 706-5055 * Fax (860) 706-5063
Juris no. 422382

reasonably believes such stagnation is necessary." Numbered paragraph six provides that "all persons having access to confidential information shall maintain it in a safe and secure matter to ensure compliance with this protective order." Numbered paragraph 12 provides in relevant part that [a]ccess to highly confidential-attorney eyes only information shall be limited to "counsel of record in this action, and staff persons employed by such counsel who reasonably need to handle such information."

Reynal's transfer of the Connecticut plaintiffs' highly confidential-attorney eyes only documents to attorney Bankston was a direct violation of the protective order. Bankston was not "counsel of record in this action" at the time of the disclosure. In fact, he was never counsel of record in this action at any time during the proceedings.

Finally, Reynal has violated Conn. Gen. Stat. § 52-146e. This section provides in relevant part "all communications and records as defined in section 52-146d shall be confidential…. [N]o person may disclose or transmit any communications and records or the substance or any part or any resume thereof which identify a patient to person, corporation or governmental agency without the consent of the patient or his authorized representative". Section 52-146d establishes that communications between a patient and his or her psychiatric mental health provider are privileged. The statute does provide for disclosure pursuant to sections 52-146f to 52-146i which are not applicable to this matter. The violation of this section provides that an aggrieved person may petition the

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Juris no. 422382

Superior Court for appropriate relief, including temporary and permanent injunctions, and may subject a person to a cause of action for civil damages.

Violation of this statue provides a second basis for disciplinary action under rule 8.4 (4) of the Rules of Professional Conduct-conduct prejudicial to the administration of justice. For the reasons set forth above, there is clear and convincing evidence that Reynal's conduct violated this statute and is subject to discipline.

Discipline.

"Disciplinary proceedings are for the purpose of preserving the courts from the official ministration of persons unfit to practice in them.... The proceeding to disbar [or suspend] an attorney is neither a civil action nor a criminal proceeding, but is a proceeding sui generis, the object of which is not the punishment of the offender, but the protection of the court.... Once the complaint is made, the court controls the situation and procedure, in its discretion, as the interests of justice may seem to it to require.... [T]he power of the courts is left unfettered to act as situations, as they may arise, may seem to require, for efficient discipline of misconduct and the purging of the bar from the taint of unfit membership. Such statutes as ours are not restrictive of the inherent powers which reside in courts to inquire into the conduct of their own officers, and to discipline them for misconduct...." (Citations omitted; internal quotation marks omitted.) *Chief Disciplinary Counsel v. Rozbicki,* 150 Conn.App. 472, 478–79, 91 A.3d 932 (2014).

Reviews of misconduct are guided by the use of the American Bar Association's Standards for Imposing Lawyer Sanctions which has been approved

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Juris no. 422382

by the Connecticut Supreme Court. *Burton* v. *Mottolese, supra*, 267 Conn. 55 and n.50. The Standards provide that, after a finding of misconduct, a court should consider: "(1) the nature of the duty violated; (2) the attorney's mental state; (3) the potential or actual injury stemming from the attorney's misconduct; and (4) the existence of aggravating or mitigating factors." A.B.A., Standards for Imposing Lawyer Sanctions (1986) Standard 3.0; see also *Burton v. Mottolese, supra*, 55. The Standards list the following as aggravating factors: "(a) prior disciplinary offenses; (b) dishonest or selfish motive; (c) a pattern of misconduct; (d) multiple offenses; (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; (f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process; (g) refusal to acknowledge wrongful nature of conduct; (h) vulnerability of victim; (i) substantial experience in the practice of law; (j) indifference to making restitution and (k) illegal conduct, including that involving the use of controlled substances." A.B.A., Standards for Imposing Lawyer Sanctions (1986) Standard 9.22; see also *Burton v. Mottolese, supra*, 55.

The standards also list the following mitigating factors, (a) absence of prior disciplinary record, (b) absence of dishonest or selfish motive; (c) personal or emotional problems; (d) timely good faith effort to make restitution or to rectify consequences of misconduct; (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; (f) inexperience in the practice of law; (f) character or reputation; (g) physical or mental disability or impairment; (h) delay in disciplinary proceedings; (i) interim rehabilitation; (j) imposition of other

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penalties or sanctions; (k) remorse; and (l) remoteness of prior offenses.

See *Burton v. Mottolese, supra*, 55.

The court must first consider the nature of the duties violated by Reynal. Reynal has violated a duty owed to the Connecticut plaintiffs and the legal system to secure and protect highly confidential, personal information that was the subject of a protective order. The breach of this duty must be observed in the context of the litigation. Both the Texas and Connecticut cases were highly litigious litigations where plaintiffs were seeking relief against an individual and his companies for personal attacks of the most indefensible kind. Reynal should have been on heightened duty that this information had to be handled with the utmost care. Reynal breached his duty owed to the legal system in that litigants can use the court system to address rights and expect that personal information would be protected from the public.

The mental state of Reynal at the time of the transfer can only be described as intentional. There is clear and convincing evidence that he was aware of his obligations under the protective order. He failed to take appropriate steps to place protections on files to prevent inadvertent disclosure. He placed an extraordinary number of documents on his hard drive, co-mingled with other documents in the Texas litigation without even identifying what he had. When he became aware of the unauthorized disclosure, he made the conscious decision to take no steps.

There was actual and potential injury stemming from the attorney's misconduct. Mattei took immediate steps to determine the extent of the

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disclosure as soon as he was advised. There was a period of about two weeks where information was coming in and the plaintiffs could only assume the worse. The potential harm is stunning. The transfer was made to Bankston without providing him any information regarding the scope of the disclosure and that the information was highly confidential, attorney eyes only. A file that contained this information could have been made available to the individual defendants.

There are two aggravating circumstances. Reynal has substantial experience in the practice of law and was in a position to realize that extra steps were necessary to protect information and that immediate action was necessary to remedy the unauthorized disclosure.

The next aggravating factor is vulnerability of the victims. This is probably the most compelling aggravating factor based on the nature of the civil action. There is no need to repeat here the horrible circumstances which the plaintiffs suffered that were then compounded by the conduct of the defendants that brought them before the court seeking redress. They were required to further disclose the most personal and intimate information about their tribulations. Their trust was violated, and their vulnerability was exposed in the worst possible way. It is this circumstance that distinguishes this case from anyother before it. The defendant attorneys, under the circumstances, were required to take extraordinary steps to secure and properly handle this information.

Mitigating factors include the absence of a prior public disciplinary record and full and free disclosure to disciplinary board and cooperative attitude toward these proceedings.

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The ABA Standards for Imposing Lawyer Sanctions provides that a suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client [or a third person's] property and causes injury or potential injury. Section 4.12. Furthermore, under section 7.2, suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of the duty owed as a professional and causes injury or potential injury to a client, the public or the legal system.

Reynal should be suspended from the practice of law in Connecticut for three months.

Reynal's conduct allowing disclosure of and failure to takes remedial steps to secure the highly confidential information violated rules 1.1, Competence, 3.4; Fairness to Opposing Party and Counsel; 5.3, Responsibilities regarding Non-Lawyer Assistance; 8.4 (4), Conduct Prejudicial to the Ministration of Justice; 1.15, Safekeeping Property; violation of the court ordered protective order; and violation of Conn. Gen. Stat. § 52-146e.

Respectfully submitted,
Office of Chief Disciplinary Counsel

By: 

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CERTIFICATION OF SERVICE

I certify that a copy of this document was mailed or delivered electronically or non-electronically on November 16, 2022 to all attorneys and self-represented parties of record and that written consent for electronic delivery was received from all attorneys and self-represented parties receiving electronic delivery.

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By_____
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